IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Richard L. Sites   Art Unit : 2624
Serial No. : 10/849,409   Examiner : Katrina R. Fujita
Filed : May 18, 2004   Conf. No. : 6976
Patent No. : 7,463,775
Issue Date : December 9, 2008

Title : ESTIMATING COMPRESSED STORAGE SIZE OF DIGITAL DATA

MAIL STOP PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)

Applicants hereby petition for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Issue Notification mailed on November 19, 2008 for the above-referenced application indicates that the Patent Term Adjustment at issuance is 861 days. Reconsideration of the Patent Term Adjustment calculation to increase PTO Delay from 861 days to 1240 days, and to increase Total PTA from 861 days to 1240 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

1) The PTO mailed a delayed 14-month first non-final Office Action on November 26, 2007, thereby according a PTO Delay of 861 days. Applicant does not dispute herein this patent term adjustment calculation for this PTO "A Delay."

Applicant : Richard L. Sites   Attorney's Docket No.: 07844-0635001 / P588
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2)   The application was filed on May 18, 2004 and the patent issued on December 9, 2008, more than three years later. No PTO Delay was calculated for issuance of the patent after three years from filing. Applicant respectfully submits that the PTO's calculation of this PTO "B Delay" contains an error and that the correct PTO Delay for issuance beyond three years from filing is 379 days, as outlined further below.

REMARKS

Applicant has calculated the PTA in accordance with the clear intent of Congress. As outlined in *Wyeth v. Dudas* (Wyeth et al. v. Jon W. Dudas, U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008), the only way that periods of time can "overlap" is if they occur on the same day, and if an "A delay" occurs on one calendar day and a "B delay" occurs on another, they do not overlap, and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. "A Delays" are defined as delays by the Office under 35 U.S.C. 154(b)(1)(A), which guarantees prompt PTO response. "B Delays" are defined as delays by the Office under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than 3-year application pendency.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, relies on the premise that the application was delayed under § 154(b)(1)(B) before the initial three-year period expired.

The *Wyeth* court determined that this construction cannot be squared with the language of § 154(b)(1)(B), which applies "if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years," and that "B delay" begins once the PTO has failed to issue a patent within three years, not before.

In the current PTA calculation, the Office has only given credit for the larger of "A Delay" or "B Delay," rather than the combined sum of "A Delay" and "B Delay" (which does not include any days after three years from filing where "A" and "B" delays overlap).

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In this patent, "A Delay" should be calculated as 861 days, and "B Delay" should be calculated as 379 days (571 days after three years from filing minus 192 days of overlapping A delay). Thus, the total PTO Delay should be calculated as 1240 days.

In consideration of the events described above, Applicant believes the PTA calculation of 861 days is incorrect. As such, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner:

1)   Total PTO Delay should be calculated as 1240 days;

2)   Total Applicant Delay should be calculated as 0 days; and

3)   Total PTA should be calculated as 1240 days.

Applicant notes that this patent is not subject to a terminal disclaimer.

The fees in the total amount of $200 are being paid concurrently on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to deposit account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,

Date: January 26, 2009   /Brian J. Gustafson/
                                              Brian J. Gustafson
                                              Reg. No. 52,978

PTO Customer No. 21876
Fish & Richardson P.C.
Facsimile: (877) 769-7945

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